**SAYDOO RAMASAMY**

**v.**

**SYENTEE DIANNA MOHD NOOR & ANOR**

HIGH COURT MALAYA, KUALA LUMPUR
MOHD HISHAMUDIN YUNUS J
[CIVIL SUIT NO: S3-24-290-03]
19 AUGUST 2003

***LAND LAW:*** *Restraints on dealings - Caveats - Compensation for wrongful caveats, claim for - Solicitor entering caveat for client purchasing land - Whether wrongful - Whether only person claiming title to or registrable interest in land can enter caveat - Whether solicitor entered caveat as agent of purchaser - Whether such agent can enter private caveat - Whether power of attorney necessary*

This was an application by the plaintiff under s. 329 of the National Land Code for the assessment of damages against the defendants for having entered a private caveat on three lots of land ('the land') for which the plaintiff was a trustee. The 1st defendant had lodged the caveat over the land as the solicitor for the 2nd defendant who had wanted to purchase the land. Subsequently, however, the 1st defendant had withdrawn the caveat upon suspecting fraud on the part of the vendor who had purported to sell the land to the 2nd defendant.

**Held (allowing the claim against the 1st defendant):**

**[1]** The 1st defendant had wrongfully secured the entry of a private caveat on the land. She had no caveatable interest in the land; nor was she a person claiming title to, or any registrable interest in, the land, or any right to such title or interest. She was merely the solicitor for the 2nd defendant who had wanted to purchase the land. The 1st defendant had no right to lodge the caveat in her own name. (pp 775 a, b-c & 776 c-d)

**[2]** Even an agent – assuming that the 1st defendant could be regarded as an agent of the 2nd defendant – cannot lodge a private caveat over a piece of land on behalf of his principle unless he or she has been authorised by a power of attorney to do so. (pp 775 e & 776 c-d)

**[3]** There was no cause of action as against the 2nd defendant as he was not the person who had entered the caveat on the land. (p 775 b)

**Legislation referred to:**
National Land Code, ss. 323(1)(a), 327(1), 329

*For the plaintiff - Joseph Yeo; M/s Joseph Yeo*
*For the defendants - DR John; M/s Atma Singh Veriah & Co*

*Reported by Gan Peng Chiang*

## JUDGMENT

**Mohd Hishamudin Yunus J:**
This is an action by the plaintiff for the removal of a private caveat lodged by the 1st defendant over three pieces of land. This application is pursuant to ss. 327 and 329 of the National Land Code.

The registered proprietor of the lands was one Visalachi (or Vesalatchi d/o Meyappa), deceased. She was the mother of the plaintiff. On the land title she is still registered as a trustee. The beneficiaries are her children, including the plaintiff. After the death of his mother, the said Visalachi, the plaintiff applied for and obtained a letter of administration in respect of the estate of his deceased mother. Thereafter, the plaintiff applied to the court to be made a trustee in respect of the said lands in place of his late mother. By an order of court dated 2 January 2003 the plaintiff was made a trustee of the said lands. On the basis of these facts and by virtue of s. 327 (1) of the National Land Code, the plaintiff is clearly a person aggrieved by the existence of the caveat.

The first defendant is an advocate and solicitors of the firm Messrs Diana Noor & Partners. She acted as the solicitor for the 2nd defendant/purchaser in a sale and purchase transaction in respect of the said lands.

Subsequent to the payment of a deposit of RM200,000 by the 2nd defendant to the so-called vendor of the said lands (the alleged vendor is not the plaintiff), this payment being part of the sale and purchase transaction, on 20 November 2002, the 1st defendant, as a solicitor for the 2nd defendant, lodged a caveat over the said lands. This is the caveat that I have mentioned at the beginning of this judgment. In the Form 19B she states:

> Saya, SYENTEE DIANNA BINTI MOHD. NOOR (No. K/P: 73050-14-5438/ A2397239) seorang Peguambela & Peguamcara yang beralamat di No. 9A, Jalan Tengku Ampuan Zabedah J9/J, Seksyen 9 Shah Alam, Selangor Darul Ehsan. Dengan ini memohon supaya dimasukkan suatu kaveat ke dalam hakmilik tanah yang tersebut dalam jadual di bawah ini supaya menyatakan mengikat:

The 1st defendant contends that she lodged the caveat as the agent of the 2nd defendant. In para. 34 of the 1st defendant's second affidavit (encl. 9) the defendant avers:

> 34. In reply to paragraph 34 of the Plaintiff's Second Affidavit, it was very clearly stated in the Borang 19B that I was entering the caveat as an agent of the Second Defendant.

The learned counsel for the defendants submits that the 1st defendant was the agent of the 2nd defendant by virtue of her appointment as the solicitor for the 2nd defendant in the sale and purchase transaction.

Now, the plaintiff, pursuant to the court order making him a trustee of the lands, intended to apply to the Registrar of Title to have his name registered on the titles as a trustee of the said lands. So, he first did a title search. This was done on 15 January 2003. To his surprise, he discovered that the 1st defendant has lodged a caveat over the said lands. Therefore, by a letter dated 31 January 2003 the plaintiff's solicitors wrote to the 1st defendant asserting his rights over the said lands and informing that the purported sale by the so-called vendor was a fraud. The solicitors' letter also asked the 1st defendant to take prompt action to remove the caveat. The 1st defendant, however, failed to take prompt action to remove the caveat.

Accordingly, on 25 February 2003 the plaintiff filed the present action.

However, after the plaintiff has filed this originating summons, the defendants themselves began to suspect fraud on the part of the so-called vendor (in cohort with others). So the 1st defendant withdrew the caveat.

The plaintiff claims that the existence of the caveat had caused him to suffer mentally and physically as well as financial loss. The existence of the caveat had also prevented him from dealing with the lands.

In the light of the subsequent withdrawal of the caveat, the plaintiff withdrew prayer (a) (prayer for the removal of the caveat) and is now merely claiming for assessment of damages pursuant to s. 329 of the National Land Code, and costs. Section 329 states:

> **329 Compensation for wrongful caveats, and limitation on repeated applications.**
>
> (1) Any person or body who, wrongfully or without reasonable cause, secures the entry of, or fails to withdraw, any private caveat shall be liable to pay compensation to any person or body who thereby suffers any damage or loss.

I allowed this application for assessment of damages or loss, with costs, against the 1st defendant. I ordered that damages be assessed pursuant to s. 329 of the National Land Code. In my judgment, the 1st defendant is a person who had wrongfully secured the entry of a private caveat.

But I dismissed the present action against the 2nd defendant since he is not the person who lodged the caveat.

I find that the 1st defendant had no caveatable interest in the lands. She was not a person claiming title to or any registrable interest in the said lands or any right to such title or interest. She was merely the solicitor for the purchaser/ 2nd defendant in the sale transaction. Thus she had no right to lodge the caveat in her own name. She does not fall under the class of persons referred to in s. 323(1)(a) of the National Land Code. This provision states:

**323. Applications for entry of private caveats.**

(1) The persons and bodies at whose instance a private caveat may be entered are:

(a) any person or body claiming title to, or any registrable interest in, any alienated land or undivided share in any alienated land or any right to such title or interest;

I do not think the "agency" argument advanced by the 1st defendant has any merit. To my mind, the caveator must be the person actually claiming the title or interest. An agent (assuming she can be said to be an agent of the 2nd defendant) cannot lodge a caveat on behalf of his principle (unless the agent is authorized by a power of attorney to do so).

In any case, there is nothing in the 1st defendant's affidavits stating that she was instructed by the 2nd defendant to lodge the caveat on his behalf. Instead, what I note is merely the following averment by the 1st defendant in her first affidavit:

> In order to protect our clients' interest in the properties (namely Property I and Property II), I caused a private caveat to be lodged on the said properties. Due to the fact our client was not available to execute the caveat form and to swear the Statutory Declaration in support of the caveat application, I executed the Borang 19B and the Statutory Declaration was sworn by Zainab.

It will be observed from the above averment that the execution of the Form 19B was done, not upon instruction by the purchaser/2nd defendant, but was done on the 1st defendant's own volition. Indeed, contrary to the 1st defendant's assertion at para. 34 of her second affidavit (as just set out above), it is to be noted that in the Form 19B, there is no statement to the effect that she lodged or signed the caveat on behalf of the second defendant, or as an agent of the 2nd defendant.

Further, it is also to be noted that the 2nd defendant's affidavits do not support the 1st defendant's claim that she lodged the caveat as his agent. Nowhere in the affidavits does he say that he instructed the 1st defendant to lodge the caveat on his behalf.

However, to repeat what I have stated earlier, even assuming that there was such an instruction by the 2nd defendant, still, the 1st defendant cannot enter the caveat on behalf of the 2nd defendant (unless the 2nd defendant had authorised the 1st defendant to enter the caveat by a power of attorney). In my view, the National Land Code requires the 2nd defendant himself to enter the caveat.

[Application for damages to be assessed against the 1st defendant allowed with costs; application against the 2nd defendant dismissed with costs.]